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April 10, 2006

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 9, 2005

Case Number: TSO-0306

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxxxx (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."[1] A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored at this time.

I. Background

The individual is employed by a DOE contractor in a position that requires her to maintain a DOE security clearance. In June 2004, the police arrested the individual and charged her with "Driving Under the Influence of Intoxicants." After the individual reported her arrest to the DOE, the DOE conducted a Personnel Security Interview with the individual in November 2004 to obtain information regarding the circumstances surrounding the arrest and the extent of the individual's alcohol use. After the PSI, the DOE referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist) for an agency-sponsored mental evaluation. The DOE consultant-psychiatrist examined the individual in March 2005, and memorialized his findings in a report (Psychiatric Report or Exhibit 12). In the Psychiatric Report, the DOE consultant-psychiatrist opined that the individual suffers from alcohol abuse, a mental illness which, in the DOE consultant-psychiatrist's opinion, has caused significant defects in the individual's judgment and reliability in the past and is likely to do so in the future. At the time of the psychiatric evaluation, the DOE consultant-psychiatrist did not believe that

[1] Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

the individual had shown adequate evidence of rehabilitation or reformation from her alcohol abuse.

In August 2005, the LSO initiated formal administrative review proceedings. The LSO first informed the individual that her access authorization had been suspended pending the resolution of certain derogatory information that created substantial doubt regarding her continued eligibility to hold a security clearance. In a Notification Letter that it sent to the individual, the LSO described this derogatory information and explained how that information fell within the purview of four potentially disqualifying criteria. The relevant criteria are set forth in the security regulations at 10 C.F.R. § 710.8, subsections f, h, j and l (Criteria F, J, H and L respectively).[2]

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations and requested an administrative review hearing. On November 16, 2005, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. I subsequently convened a hearing in the case in accordance with the Part 710 regulations.

At the hearing, seven witnesses testified. The LSO called two witnesses and the individual presented her own testimony and that of four witnesses. In addition to the testimonial evidence, the LSO submitted 27 exhibits into the record; the individual tendered one exhibit. On March 28, 2006, I received the hearing transcript at which time I closed the record in the case.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable

[2] Criterion F relates to information that a person "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive National Security Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.30." 10 C.F.R. § 710.8(f). Criterion H concerns information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8 (j). Criterion L relates, in relevant part, to information that a person has "engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or undue duress which may cause the individual to act contrary to the best interests of national security . . . " 10 C.F.R. § 710.8 (l).

doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites four potentially disqualifying criteria as bases for suspending the individual's security clearance, *i.e.*, Criteria F, H, J and L.

With respect to Criterion F, the LSO questions the individual's candor because she: (1) failed to reveal three alcohol-related incidents during her 2004 PSI, (2) omitted three alcohol-related incidents from a Questionnaire for National Security Positions (QNSP) that she completed on March 25, 1999 and (3) provided information to the DOE consultant-psychiatrist regarding the circumstances of her July 1997 citation for "Driving on a Revoked License" that differed from the information that she had provided to the police officer at the time of her citation. From a security standpoint, false statements made by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See e.g., Personnel Security Hearing* (Case No. VSO-0013), 25 DOE ¶ 82,752 at 85,515 (1995) (affirmed by OSA, 1995); *Personnel*

Security Hearing (Case No. VSO-0281), 27 DOE ¶ 82,821 at 85,915 (1999), *aff'd*, 27 DOE ¶ 83,030 (2000) (terminated by OSA, 2000). In addition, a person's deliberate falsification raises a security concern that he or she might be susceptible to coercion, pressure, exploitation, or duress arising from the fear that others might learn of the information being concealed. *See Personnel Security Hearing* (Case No. VSO-0289), 27 DOE ¶ 82,823 (1999), *aff'd*, 27 DOE ¶ 83,025 (2000) (affirmed by OSA, 2000).

Regarding the Criterion H allegations at issue, they are based solely on the opinion of the DOE consultant-psychiatrist that the individual suffers from alcohol abuse, a mental illness which, according to the DOE consultant-psychiatrist causes, or may cause, a significant defect in the individual's judgment or reliability. From a security perspective, a mental illness or condition may cause a significant defect in a person's psychological, social and occupational functioning and could raise questions about the person's judgment, reliability and stability. *See* generally, Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline I, ¶ 27.

As for Criterion J, the LSO relates the following information. First, a DOE consultant-psychiatrist diagnosed the individual as suffering from alcohol abuse in 2005. Second, the individual has had five alcohol-related incidents in a 12-year period, one in 1993, one in 1996, two in 1997 and one in 2004. The information set forth above clearly raises questions about the individual's alcohol use. Excessive alcohol consumption is a security concern because the behavior can lead to the exercise of questionable judgment, unreliability, and a failure to control impulses, and can increase the risk that classified information may be unwittingly divulged. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline G, ¶ 21.

Lastly, the LSO cites Criterion L as a security concern based on information that it gleaned from a background investigation of the individual. Specifically, the LSO states that the individual was suspended for one year from high school in 1994 after being involved in her second physical altercation at school. In addition, the LSO relates that the individual was also issued a citation in 1994 for smoking marijuana during her lunch at high school. Finally, the LSO asserts that the individual was suspended for three days without pay from her place of employment in 1997 for slow work performance, absenteeism, tardiness, and not following the proper chain of supervision.

IV. Findings of Fact

Most of the facts in this case are uncontested. Where there are discrepancies in the record, I will note them as appropriate.

The individual started consuming alcohol at age 15. Ex. 12 at 15. According to the record, she got intoxicated every weekend while in high school, drinking as much as 80 ounces of beer in two hours. *Id.* The individual was described at the hearing by her mother as a "rebel" during her high school years. Tr. at 89. In 1994, while in high school the individual received a citation from a narcotics agent for smoking marijuana during lunch. Response to Notification Letter dated November 9, 2005 at 2. The individual was

suspended from high school for a one year period after her second physical altercation in school. *Id.*

Between 1993 and 2004, the individual had five encounters with law enforcement officials that relate directly or indirectly to either her consumption of alcohol as an adult or her proximity to that substance as a minor. The individual's first alcohol-related incident occurred in 1993 when the police charged her at age 16 with having an "Open Container and Minor in Possession."[3]

The individual's second alcohol-related incident occurred in 1996 when the police charged the individual with presenting false evidence of age and being a minor in a liquor establishment. Ex. 12 at 12. According to the record, the individual pleaded guilty to these charges. *Id.*

In 1997, the policed arrested the individual and charged her with Driving While Intoxicated (DWI) and other traffic violations. Ex. 27 at 42. According to the arrest record, a police officer observed the individual's vehicle make a left turn on a red light on the evening of February 2, 1997.[4] *Id.* After initiating the traffic stop, the officer smelled an odor of alcohol and observed the individual's blood-shot eyes and slurred speech. *Id.* The police officer administered a field sobriety test to the individual which she failed. Ex. 26 at 11. The individual was also given a Breath Alcohol Content (BAC) test which yielded test results of .09 and .08. Ex. 27 at 42. The individual's license was immediately revoked and she was charged with DWI and running a red light. *Id.* The individual pleaded guilty to the DWI, paid a fine and attended six mandatory DWI classes. Ex. 26 at 13. By her own report, the individual abstained from alcohol for a period of 18 months following her 1997 DWI. Ex. 12 at 16.

The fourth incident that the LSO deems to be "alcohol-related" relates to the 1997 DWI. Six months after her license had been revoked for the 1997 DWI, the individual was arrested and charged with "Driving on a Revoked License and No Insurance."

The individual's fifth alcohol-related incident occurred on June 30, 2004 when she was arrested and charged with Driving While Under the Influence of Intoxicants. According to the record, the individual's BAC test on the day in question registered .12 and .13.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been

[3] The individual claims that she received the citation because she was the driver of a vehicle that had beer in it. Ex. 26 at 18. The individual denies that she consumed any alcohol at the time she received the citation. *Id.*

[4] The individual denies that she ran a red light on the night in question. Ex. 24 at 18, Ex. 26 at 10.

guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).[5] After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Criterion F

According to the LSO, the individual provided false or misleading information regarding her past alcohol-related legal incidents in three separate venues: during the 2004 PSI, during the 2005 psychiatric examination and on her 1999 QNSP.

During the 2004 PSI, the Personnel Security Specialist asked the individual if she had been involved in any other alcohol-related incidents besides the 1997 DWI arrest and the 2004 "Driving While Under the Influence of Intoxicants" arrest. Ex. 24 at 20. The individual responded negatively. *Id.* When asked at the hearing why she had failed to reveal her two alcohol-related charges as a minor and her 1997 Driving on a Revoked License charge, the individual responded, "I guess I was so torn up about it, I probably just didn't think of it." Transcript of Hearing (Tr.) at 107. It was my impression from observing the demeanor of the individual and listening to her testimony at the hearing that the individual's failure to disclose fully her alcohol-related offenses during the 2004 PSI was inadvertent, not deliberate. I also determined from a common sense standpoint that it was understandable that the individual did not consider the "Driving on a Revoked License" charge to be an alcohol-related incident. Even though the individual's driver's license was revoked as a consequence of her 1997 DWI, the "Driving on a Revoked License" charge could properly be characterized solely as a traffic offense as opposed to an alcohol-related offense.

As for the alleged contradictory statements that the individual made to the police officer in 1997 and to the DOE consultant-psychiatrist in 1995 about the reason why she was driving on a revoked license, I make the following findings. According to the arrest record in 1997, the individual told the police officer that she could only drive to and from work on her "restricted" license but was driving to her insurance company to pay her insurance. Ex. 27 at 43. The individual told the DOE consultant-psychiatrist that she was driving on a limited license on the day in question because she needed to cash a check at the credit union. Ex. 12 at 13. At the hearing, the DOE consultant-psychiatrist testified that he did not make an issue about the subject discrepancy but rather was concerned that the individual had exceeded the scope of her court-restricted driving privileges by driving somewhere other than to and from work. Tr. at 55. I agree with the DOE consultant-

[5] Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

psychiatrist's assessment that the relevant issue here is not the discrepant information but the individual's failure to abide by the terms of her restricted driver's license. After carefully reviewing all the evidence, I find that the minor discrepancy between what the individual told the police officer in 1997 and what she told the DOE consultant-psychiatrist in 2005 does not rise to the level of a "significant" information for purposes of 10 C.F.R. § 710.8(f). In my opinion, the individual's actions in exceeding the scope of her driving privileges in contradiction of a court order is more appropriately considered under 10 C.F.R. § 710.8(l). However, the LSO did not include this allegation in its Criterion L charges in the Notification Letter. For this reason, the matter is not properly before me and I can make no findings on it under Criterion L.

As for the individual's omission on her 1999 QNSP of the 1993 charge of "Open Container and Minor in Possession" charge, her 1996 "Minor in a Liquor Establishment" charge, and her 1997 "Driving on a Revoked License" charge, the individual testified that "she did not think" of the other three charges at time she filled out the QNSP. Tr. at 107. She added that she "wasn't trying to hide anything" from the DOE. *Id.* After carefully considering the individual's testimony and evaluating her demeanor at the hearing, I find that the individual's omissions of the 1993 and 1996 charges were oversights on her part and that her omission of the 1997 "Driving on a Revoked License" was attributable to a misunderstanding on her part that this incident could properly be characterized as "alcohol-related."

Based on all the foregoing, I find that the individual has brought forward convincing testimonial evidence to mitigate the Criterion F charges at issue.

B. Criteria H and J

The individual disagrees with the DOE consultant-psychiatrist's diagnosis in this case and disputes that she currently has, or ever had, a problem with alcohol. Tr. at 102. The overwhelming weight of evidence in the case, however, supports a finding that the individual suffers from alcohol abuse and that this mental illness has caused a significant defect in the individual's judgment or reliability in the past and will likely do so in the future if the illness is left untreated.

The DOE consultant-psychiatrist clearly articulated in his Psychiatric Report and testified convincingly at the hearing why the individual suffers from alcohol abuse. Ex. 12, Tr. at 54-75. In addition, the individual's own expert, a highly credentialed psychiatrist testified that the individual suffers from alcohol abuse. Tr. at 28-43. In view of the psychiatric consensus regarding the alcohol diagnosis in this case, the pivotal question at issue is whether the individual has presented convincing evidence that she is adequately reformed or rehabilitated from her alcohol abuse.

1. The Individual's Testimony

At the hearing, the individual testified that she stopped consuming alcohol in December 2004. *Id.* at 95. The individual also testified that she does not currently attend Alcoholics

Anonymous (AA), although she claims that she went to AA for almost one year at the advice of her attorney in the 2004 DWI case. *Id.* at 95, 115. She explained that her attorney thought it would be good for her court appearance if she got some signatures from AA meetings. *Id.* at 115. The individual admitted at the hearing that she never progressed through any of the AA steps. *Id.* at 118. She testified that she "didn't feel that she got anything out of AA." *Id.* She also attended one week of court-ordered DWI school after her 1997 DWI but she could not recall at the hearing what, if anything, she learned from that experience. *Id.* at 122.

According to the individual, she does not keep alcohol in her house. Id. at 114. She testified that she does not intend to drink again. *Id.* at 118. She did admit, however, that she has a second job as a bartender but claims that she is not tempted to drink because of her second job. *Id*. at 114.

2. The Mother's Testimony

The individual's mother testified at the hearing on her daughter's behalf. The mother related that she sees her daughter every day even though they no longer live together. *Id.* at 88, 90. She corroborated that the individual does not have alcohol in her house. *Id.* at 90.

3. The DOE Consultant-Psychiatrist's Testimony

The DOE consultant-psychiatrist listened to the testimony of the individual and all the other witnesses before he testified for a second time to address the issue of rehabilitation and reformation in this case. The DOE consultant-psychiatrist first reviewed the recommendations that he made in his Psychiatric Report about what he considered to constitute adequate evidence of rehabilitation in this case. The evidence needed is the following:

(1) Documented evidence of attendance at AA with a sponsor and working on the 12 steps at least once a week for a minimum of 100 hours over at least two years and abstinence from alcohol and all non-prescribed controlled substances for a minimum of two years, or
(2) Satisfactory completion of a professionally run alcohol treatment program, either inpatient or outpatient, including aftercare, for a minimum of six months and abstinence from alcohol and all non-prescribed controlled substances for a minimum of two years.

As adequate evidence of reformation, the DOE consultant-psychiatrist reviewed the two options that he posited in his Psychiatric Report:

(1) Two years of abstinence from alcohol and all non-prescribed controlled substances if the individual goes through one of the two rehabilitation programs set forth above, or

(2) Five years of abstinence from alcohol and all non-prescribed controlled substances if the individual does not go through one of the two rehabilitation programs set forth above.

Ex. 12 at 31-32.

The DOE consultant-psychiatrist concluded his testimony by stating that the individual's 14 months of sobriety as of the date of the hearing shows resolve on her part but is far short of the time needed before he could consider her reformed or rehabilitated from her alcohol abuse.

4. The Testimony of the Individual's Psychiatrist

At the hearing, the individual's psychiatrist testified that the individual did not ask her for an opinion regarding appropriate treatment. Had she done so, testified the psychiatrist, she would have recommended that the individual seek counseling for substance issues and consider attending AA. Tr. at 43. [6]

5. Hearing Officer Evaluation of Evidence

Based on the record before me, I find that (1) there is little evidence of rehabilitation in this case and (2) the individual's 14 months of sobriety alone is not sufficient for me to find that she is reformed from her alcohol abuse.

As an initial matter, the individual does not acknowledge that she has any problem with alcohol. Her denial in this regard is, in my opinion, a major impediment to any rehabilitation or reformation in this case. With regard to rehabilitation, it is clear that the individual has not embraced any rehabilitation program in a meaningful way. From the record, it appears that the individual's attendance at AA was motivated only by her desire to obtain signatures to place her in a more favorable light in the eyes of the court overseeing the penalty phase of her 2004 DWI conviction. Moreover, the individual admitted under oath that she never worked any of the AA steps and did not get "anything out of AA." With regard to the individual's attendance at DWI school in 1997, I note that her attendance was compulsory and that, by her own account, she does not recall what she learned.

On the issue of reformation, it is positive that the individual has refrained from consuming alcohol for 14 months and has no alcohol in her house. Weighed against these positive factors are the following negative ones. First, the individual has a part-time job serving beer at a sports arena. As the DOE consultant-psychiatrist pointed out at the hearing, this bartending job is not a "good thing" for someone who suffers from alcohol

[6] In Exhibit A entitled "Psychiatric Diagnostic Interview Examination" the individual's psychiatrist stated that there was no need for treatment as of November 11, 2005. Ex. A. The psychiatrist's testimony suggests that she did not recommend any treatment at the time because she was only doing a diagnostic interview.

abuse because the job places the individual in close contact with a substance that she needs to avoid. *Id.* at 69. Moreover, she would be in circumstances where others are consuming alcohol freely. Second, the individual previously abstained from alcohol for a period of 18 months following her 1997 DWI yet resumed drinking. Ex. 12 at 16. When asked at the hearing why she resumed drinking at that point, she responded, "I don't know." Tr. at 121. The fact that the individual resumed drinking after a period of 18 months sobriety is support for the DOE consultant-psychiatrist's view that the individual needs five years of sobriety if she elects not to participate in a program such as AA or counseling that offers structure, discipline and accountability.

In the end, after carefully weighing all the factors described above, I find that not enough time has elapsed for me to find reformation in this case. Assuming that the individual remains abstinent, she will need to do so until December 25, 2009, according to the DOE consultant-psychiatrist, before I could conclude that she had achieved reformation. For this reason, I find that the individual has not brought forth sufficient evidence to mitigate the security concerns predicated on Criteria H and J in this case.

C. Criterion L

The LSO questions the individual's honesty, trustworthiness and reliability because of two incidents that occurred in 1994 when she was in high school and some employment related issues that occurred in 1997.

Several factors mitigate the adverse inference arising from the two incidents that occurred in 1994. First, the individual was an immature adolescent in 1994. By her mother's account, the individual was a "rebel" in high school. The evidence in the case supports a finding that the individual has transformed into a responsible adult. The individual's former supervisor, her Chief Union Steward, and her mother all testified to her good character. Second, the incidents at issue occurred more 12 years ago and since that time there is no evidence that the individual has used marijuana or been involved in physical altercations. In the end, there is no evidence to suggest that the 1994 incidents are likely to recur.

With regard to the December 31, 1997 suspension from work for three days, I note the following. The background investigation contains information from the individual's personnel file regarding the individual's absenteeism, tardiness, slow work performance and failure to follow the proper chain of supervision that led to her being counseled and eventually suspended. Ex. 27 at 28, 37-38. According to the Counseling Report dated December 31, 1997 regarding the three day suspension, the individual did not want to sign the report. *Id.* at 38. At the hearing, the individual testified that she was never suspended from her job in 1997 and never disciplined in any way. Tr. at 118-123. The individual's refusal to acknowledge this incident is a serious concern in my view. If the individual truly believed that the information in the background investigation file was in error, it was her burden to present evidence on this point. The individual was represented by Counsel at the hearing and Counsel had ample opportunity to address the relevant issues before the hearing.

The individual's failure to take responsibility for the 1997 employment-related incident, or produce documentary or testimonial evidence to refute adverse inferences arising from the 1997 employment-related incident outweighs, in my opinion, the following positive or neutral factors in this case: (1) the alleged suspension at issue occurred eight years ago, (2) the individual's supervisor for the period 2004 to 2005 testified that the individual did not report late "very often," was not the subject of any disciplinary action for that year, and was a good worker, and (3) the Chief Union Steward testified that he had no knowledge of any tardiness or absenteeism on the individual's part. I am according considerable weight to the individual's failure to refute the 1997 employment-related incident in light of her insistence that the incident did not occur because the matter goes to the heart of Criterion L, *i.e*, the individual's honesty, reliability and trustworthiness. Assuming that the incident did occur as reported and documented in the OPM investigation file, I would then find that the individual testified falsely under oath at the hearing.

In the end, while it is my common sense judgment that the individual has mitigated the Criterion L charges relating to the two incidents in 1994, I find that the individual has failed to mitigate the Criterion L concerns regarding the 1997 employment-related incident at issue in the Notification Letter.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria F, J, H and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth sufficient evidence to mitigate the Criterion F allegations and some of the Criterion L allegations. I find, however, that the individual has not brought forth sufficient evidence to mitigate the security concerns associated with Criterion J, Criterion H, and one allegation under Criterion L. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: April 10, 2006